

Dave Hardy
Secretary of Revenue



STATE TAX DEPARTMENT

Dale W. Steager
State Tax Commissioner

May 10, 2019

Brad McElhinny
West Virginia MetroNews
1111 Virginia Street E.
Charleston, West Virginia 25311

Re: Freedom of Information Act Request Relating to Federal Subpoenas.
Legal Log No. 19-164

Dear Mr. McElhinny:

This letter is in response to your West Virginia Freedom of Information Act ("WV-FOIA") request, dated May 5, 2019 and received by the West Virginia State Tax Department ("Tax Department") by email on May 3, 2019.¹ Your request read in relevant part as follows:

Dear Commissioner Steager

Under the West Virginia Freedom of Information Act, §29-B-1-1 et seq., I am requesting an opportunity to inspect or obtain copies of public records of any federal subpoenas the West Virginia State Tax Department has received since Jan. 1, 2019. I also request copies of any public documents that were provided by the state agency under the subpoena or subpoenas. If there are any fees for searching or copying these records, please inform me if the cost will exceed \$ 15. However, I would also like to request a waiver of all fees in that the disclosure of the requested information is in the public interest and will contribute significantly to the public's understanding of federal oversight of West Virginia's government. This information is not being sought for commercial purposes.

Your request for a copy of "public records of any federal subpoenas the West Virginia State Tax Department has received since Jan[uary] 1, 2019" is **GRANTED**.

Note that the copy of the enclosed subpoena requests copies of "[r]ecords of any lien filed by the State of West Virginia or the West Virginia Department of Revenue, against any of the companies or against any assets or property of any of the companies, or against James C. Justice II or any of his assets or property."

¹ Please note that the receipt date of the emailed FOIA, i.e., May 3, 2019, is the correct "receipt date" as stated on the email "date" line.

Brad McElhinny
West Virginia MetroNews
Legal Log No. 16-164

Under the Freedom of Information Act a public agency is obligated to produce records not otherwise exempt from Freedom of Information Act disclosure that are in an agency's possession that are not already in published public records. Agencies are not obligated to use public resources to reproduce copies of public records under the Freedom of Information Act that are already freely accessible to the public (for example in a public library, on the internet or in a public document repository or clearinghouse).

The Tax Department is not the custodian of records for tax liens. Tax liens are public information and readily accessible to the public through the county clerk of the particular county in which the lien has been filed. Because of the public accessibility of tax liens, the Tax Department does not provide copies of tax liens in response to Freedom of Information Act requests.

To the extent that your Freedom of Information Act request for "copies of any public documents that were provided by the state agency under the subpoena or subpoenas" seeks tax liens, your request for any such lien is **DENIED**.

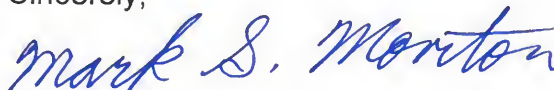
Acknowledging the exclusion of publicly accessible tax liens from the ambit of Freedom of Information Act disclosure (discussed above), as of this date, the Tax Department has no documents responsive to the portion of your request seeking "copies of any public documents that were provided by the state agency under the subpoena or subpoenas."

Therefore, your request for "any public documents that were provided by the Tax Department under the subpoenas" is **DENIED**.

This concludes the Tax Department's response to your Freedom of Information Act request, dated and received by the Tax Department by email on May 3, 2019.

You are advised that the WV-FOIA affords you the opportunity to seek injunctive or declaratory relief in the Circuit Court of Kanawha County.

Sincerely,



Mark S. Morton
General Counsel

MSM/dam
Enclosure:

U.S. Department of Justice
Criminal Division
Cover letter – April 12, 2019
Grand Jury Subpoena & attachments – April 30, 2019
West Virginia State Tax Department
United States District Court
Southern District of West Virginia



U.S. Department of Justice

Criminal Division

Public Integrity Section

Washington, D.C. 20530

April 12, 2019

RECEIVED

APR 15 2019

WV TAX DEPARTMENT
LEGAL DIVISION

West Virginia State Tax Department
1001 Lee Street East
Charleston, WV 25301

Re: Grand Jury Subpoena – April 30, 2019

Dear Custodian of Records:

Enclosed herewith please find a Federal Grand Jury Subpoena directed to the Authorized Records Custodian of West Virginia State Tax Department. Also enclosed is a Waiver and Certification which, if properly executed and returned with the records subpoenaed by the Grand Jury, will release you from your Grand Jury appearance on April 30, 2019. Please return a copy of the subpoena with the records.

Please execute the acknowledgment section of this letter reflecting that you have received and accepted service of this subpoena and return it to me.

The Waiver and Certification is to be returned with the records and documents by certified mail addressed to:

Simon Cataldo
Sean Mulryne
1400 New York Ave.
12th Floor
Washington, D.C. 20530

Thank you for your cooperation in this matter. If you have any questions, please contact me at (202) 514-1412.

Sincerely,
ANNALOU TIROL
Acting Chief
Public Integrity Section

/s/ Simon Cataldo
Simon Cataldo
Trial Attorney

Enclosures

I acknowledge receipt and accept service of the above-referenced subpoena.

Name

Date

UNITED STATES DISTRICT COURT

for the

Southern District of West Virginia

SUBPOENA TO TESTIFY BEFORE A GRAND JURY

To: West Virginia State Tax Department
Authorized Record Custodian

YOU ARE COMMANDED to appear in this United States district court at the time, date, and place shown below to testify before the court's grand jury. When you arrive, you must remain at the court until the judge or a court officer allows you to leave.

Place: United States District Court 300 Virginia Street, East Room 2400 Charleston, WV 25301	Date and Time: 04/30/2019 9:30 am
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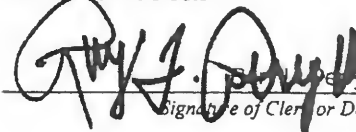
You must also bring with you the following documents, electronically stored information, or objects (*blank if not applicable*):

See attached.

Pursuant to the provisions of 18 U.S.C. § 1510(b) and 12 U.S.C. § 3420(b)(1) you are not to disclose the existence or contents of the subpoena or information furnished to the grand jury in response to the subpoena.

Date: 04/12/2019

CLERK OF COURT





Signature of Clerk or Deputy Clerk

The name, address, e-mail, and telephone number of the United States attorney, or assistant United States attorney, who requests this subpoena, are:

Simon Cataldo
Sean Mulryne
1400 New York Ave., NW
12th Floor
Washington, D.C. 20530
(202) 514-1412

PROOF OF SERVICE

This subpoena for *(name of individual or organization)* West Virginia State Tax Department
was received by me on *(date)* _____.

☐ I served the subpoena by delivering a copy to the named person as follows: _____

_____ on *(date)* _____; or

☐ I returned the subpoena unexecuted because: _____

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

ATTACHMENT TO GRAND JURY SUBPOENA
RETURNABLE: April 30, 2019

TO: West Virginia State Tax Department
ATTN: AUTHORIZED RECORD CUSTODIAN

PRELIMINARY MATTERS

- A. If you have questions about specific items requested or about the request generally you are authorized to discuss this subpoena with Department of Justice Trial Attorney Simon Cataldo, at (202) 616-2464, or FBI Special Agent James Lafferty, at (304) 224-2432
- B. *Records*: The term "records" encompasses all recorded information in whatever form it exists, including, without limitation, paper documents, electronically stored information, photographs, and audio or video recordings. The term "records" specifically includes, without limitation, e-mail messages, text messages (also known as SMS or MMS messages), messages sent or received by electronic instant messaging programs, and all other similar electronic messages. The term "records" also specifically includes, without limitation, all information stored on any computer, cellular telephone, tablet computer, or other electronic device capable of storing information.
- C. Records are requested in digital format, preferably native form. Otherwise, please provide PDF images. If digital format is unavailable, please provide hard copies of the requested records.
- D. Records should be produced in the condition in which they are stored by you, including all notes, attachments, marginalia, posted notes, etc. Records that are attached to responsive records or are incorporated by reference in responsive records should also be produced.
- E. All checks, money orders or other negotiable instruments should be copied front and back in order to obtain endorser and clearing information.
- F. If provided, please return responsive records with a completed waiver of grand jury appearance.
- G. If a document demanded by this subpoena is withheld under a claim of privilege, or is otherwise withheld, provide the following information regarding the record: (1) its date; (2) the name and title of its author(s); (3) the name and title of each person to whom it was addressed, distributed, and disclosed; (4) the number of pages; (5) an identification of any attachments or appendices; (6) a general description of its subject matter; (7) its present location and the name of its present custodian; (8) the paragraph of this subpoena to which it is responsive; and (9) the nature of the claimed privilege or other reason the document is withheld.

SCOPE AND SUBJECT OF RECORDS REQUEST

1. Unless otherwise indicated, the relevant period for the records request is **January 1, 2010, through December 31, 2016.**
2. Unless otherwise indicated, references to "the companies" below refer to the companies listed on the attached exhibit (listing companies beginning with "A&G Coal Corporation" and ending with "Wilcox Industries Inc.").
3. The Settlement announced publicly on or about August 6, 2018, by James C. Justice II about his tax obligations or the tax obligations of any of the companies.
4. Provide the following:
 - a) Records of any lien filed by the State of West Virginia or the West Virginia Department of Revenue, against any of the companies or against any assets or property of any of the companies, or against James C. Justice II or any of his assets or property.
 - b) Any communications between any employee, agent, or representative of the West Virginia Department of Revenue and any officer, employee, agent, or representative of any of the companies about any taxes or other debt owed by James C. Justice II or any of the companies to the State of West Virginia or to any of its political subdivisions (e.g., a county, city, or town in West Virginia).
 - c) Records of any tax obligation or other debt that was owed to the West Virginia Department of Revenue or to the State of West Virginia or to any of its political subdivisions (e.g., a county, city, or town in West Virginia), by any of the companies.
 - d) Records of any meeting involving any employee, agent, or representative of the West Virginia Department of Revenue, about any tax obligation or other debt of James C. Justice II or any of the companies, in which James C. Justice or any representative of the companies participated. This request includes any minutes or notes of any meeting.
 - e) Any calendar or calendar entry about any meeting involving any employee, agent, or representative of the West Virginia Department of Revenue and any officer, employee, agent, or representative of any of the companies.

UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF WEST VIRGINIA

IN RE: GRAND JURY PROCEEDINGS

WAIVER AND CERTIFICATION

I hereby state that I am the _____ of
West Virginia State Tax Department and as such I am the custodian of the records described in a
subpoena duces tecum returnable to a Federal Grand Jury for the Southern District of West
Virginia at Charleston, West Virginia, on April 30, 2019. I understand that I have an absolute
right to appear personally, at the expense of the United States, before the Grand Jury in response
to that subpoena, to testify under oath, and to produce the records called for by that subpoena.
Nonetheless, I choose to waive that right.

Attached are the records called for by that subpoena and a list describing the type and
quantity of records being produced. I have searched and caused to be searched the appropriate
records, and to the best of my knowledge and belief the records hereby produced fully comply
with the requirements of that subpoena. The records hereby produced were (1) made at or near
the time of the occurrence of the matters set forth by, or from information transmitted by, a person
with knowledge; (2) kept in the course of a regularly conducted activity; and (3) made as a regular
practice of that activity.

I declare under penalty of perjury that the foregoing is true and correct. Executed on

Date

Signature

These documents were presented to the Grand Jury on _____

Date

(Signature of Grand Jury Foreman)

UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF WEST VIRGINIA

ADVICE TO GRAND JURY WITNESSES

This advice is given to all Grand Jury witnesses as a general practice without regard to culpability.

1. A Grand Jury consists of sixteen to twenty-three citizens who inquire into possible violations of federal law that may have occurred in this judicial district. Only the members of the Grand Jury, attorneys for the government, the witness under examination and a court reporter (and possibly a translator, if necessary) may be present in the Grand Jury Room while evidence is being presented.

2. You will be expected to answer all questions asked of you, except that you do not have to answer any question to which a truthful answer would tend to incriminate you, or if some other recognized legal privilege would apply.

3. An untruthful answer to any question may subject you to a prosecution for perjury. Anything that you say in the Grand Jury may be used against you by the Grand Jury or in Court.

4. You may consult an attorney about your Grand Jury appearance before testifying. Your attorney may wait immediately outside the Grand Jury Room while you are testifying. Upon your request, you will be afforded a reasonable opportunity to step outside the Grand Jury Room to consult with your attorney before answering any question.

5. The mere fact that a person who has been subpoenaed to testify before a Grand Jury has been advised of his or her rights should not necessarily be taken to mean that the person is likely to be charged (indicted) with a crime.

GENERAL INFORMATION REGARDING YOUR APPEARANCE BEFORE THE GRAND JURY

1. Upon receipt of your subpoena, please contact the Assistant United States Attorney (AUSA) indicated on the subpoena to obtain the precise time that you are scheduled to testify. If you fail to do so, you will be required to appear at the time indicated on your subpoena and wait until you are called. Also, please provide the AUSA with your work and home phone numbers so that you may be contacted in the event of changes in the date or time of your appearance.

2. You are not required to discuss your anticipated testimony with the AUSA before your appearance but may do so if you wish.

3. Please read the attached form regarding witness fees and expenses. The United States Attorney's Office will assist you in making travel arrangements, including method of travel and hotel accommodations if necessary. If you are excused from the Grand Jury with sufficient time left in the day to return to your place of residence that day, you are expected to do so and overnight accommodations will not be authorized in that case.

4. YOU MUST BRING PHOTO IDENTIFICATION AND YOUR SUBPOENA WITH YOU TO THE COURTHOUSE. NO CELL PHONES ARE PERMITTED IN THE GRAND JURY ROOM!!

If you have any questions concerning your appearance, or other questions, you should consult your attorney, or you may contact the United States Attorney's Office at 304-345-2200.



**INSTRUCTIONS FOR FACT WITNESSES APPEARING ON
BEHALF OF THE UNITED STATES GOVERNMENT
(Not Applicable to Federal Employees)**

READ THE INFORMATION CONTAINED ON THIS FORM BEFORE YOUR COURT APPEARANCE. PLEASE CALL THE INDIVIDUAL(S) LISTED BELOW FOR INFORMATION REGARDING TRAVEL ARRANGEMENTS AND SPECIFIC ENTITLEMENTS. IF YOU HAVE A MEDICAL CONDITION OR FAMILY SITUATION THAT REQUIRES SPECIAL CONSIDERATION, PLEASE ADVISE THE INDIVIDUAL LISTED BELOW AS SOON AS POSSIBLE.

CONTACT PERSON(S): Erin Quintrell

TELEPHONE NUMBERS: (304) 345-2200
1-800-659-8726

VERIFY YOUR ATTENDANCE

On the last business day (Monday- Friday) BEFORE you travel to court, call the above number to verify that your attendance is required. This may prevent a wasted trip in the event the trial date is changed.

APPEARANCE IN ANOTHER CITY

If you are required to travel to another city to appear in court, immediately contact the individual listed above and request instructions. Any amount advanced to you will be deducted from your fees and allowances.

REIMBURSEMENT OF EXPENSES AND ATTENDANCE FEES

- A. **ATTENDANCE FEE:** You will be paid a fee of \$40 per day, including travel days.
- B. **TRANSPORTATION:** Call the individual listed above to obtain information on transportation. Reimbursement will be made for travel by the least expensive method reasonably available to you. The following rules apply to transportation expenses:

1. **Local Travel:** The recommended method of travel in the local area of court is transit bus/subway.

2. **Privately Owned Vehicles** You will be reimbursed the following amounts:

(POV): Motorcycle: \$.55 per mile

Automobile \$.58 per mile

Airplane \$1.21 per mile

In addition to the above mileage allowance, necessary tolls, parking and other fees may be reimbursed. You must keep a record of your odometer readings if you travel by motorcycle or automobile. If two or more witnesses travel in the same vehicle, only one reimbursement for mileage can be made.

IF POV EXPENSES, INCLUDING MILEAGE, TOLLS, PARKING AND OTHER ASSOCIATED COSTS, ARE GREATER THAN THE GOVERNMENT AIRFARE, YOU WILL BE RESPONSIBLE FOR THE DIFFERENCE.

3. **Common Carrier:** If you are located outside the local court area, CALL THE INDIVIDUAL LISTED ABOVE FOR INSTRUCTIONS. Train, bus or airfare will be reimbursed at the Government rate. Reimbursement WILL NOT be made for First Class accommodations, "Frequent Flyer" tickets, or charter service. DO NOT purchase non-refundable tickets. If your appearance date changes or is canceled, you WILL NOT be reimbursed for non-refundable tickets. If you have any questions concerning transportation arrangements, please contact the individual(s) listed above.

- C. **MEALS:** If it is necessary for you to remain away from home overnight, you will receive the following daily meal allowances:

\$ ____ For each travel day PLUS \$ ____ For each for day at court

- D. **LODGING:** If it is necessary for you to remain away from home overnight, you will be reimbursed for the ACTUAL COST of your hotel/motel room which may not exceed \$ ____ per night, including tax.
*See below for allowances.

YOU MUST RETAIN RECEIPTS

ALL CLAIMS FOR PARKING MUST BE SUPPORTED BY A RECEIPT. OTHER EXPENSES EQUAL TO \$75 OR MORE MUST BE SUPPORTED BY A RECEIPT, WITH THE EXCEPTION OF MEALS AND MILEAGE.

DISMISSAL

When you are advised that your attendance is no longer required, you should request information regarding the payment of the fees and allowances outlined above. The individual requiring your attendance will provide you with a Fact Witness Voucher. You will be required to list your expenses on this Voucher. The Voucher will be submitted to the U.S. Marshals Service for payment. The U.S. Marshal Service will process the voucher and MAIL the payment to you. If you require funds to return home, you MUST notify the Contact Person indicated above IN ADVANCE OF YOUR TRAVEL.

Beckley:	\$55.00 Meal Allowance and \$ 94.00 Lodging Allowance Each Day- \$149.00 Total
Bluefield:	\$55.00 Meal Allowance and \$ 94.00 Lodging Allowance Each Day- \$149.00 Total
Charleston:	\$56.00 Meal Allowance and \$107.00 Lodging Allowance Each Day- \$163.00 Total
Parkersburg:	\$55.00 Meal Allowance and \$ 94.00 Lodging Allowance Each Day- \$149.00 Total
Huntington:	\$55.00 Meal Allowance and \$ 94.00 Lodging Allowance Each Day- \$149.00 Total

Entity Name	Business Purpose
A&G Coal Corporation	Coal Mining
Airway Resources, LLC	Mine Permits/Leases
American Turf Grass Corporation	Turf Grass Farm
Baden Reclamation Company	Coal Mine Reclamation
Bardo Mining, LLC	Mine Permits/Leases
Bellwood Corporation	Land Holding Company
BKCC L.L.C.	Black Knight Country Club
Black River Coal, LLC	Coal Mining
Blueridge Farm Center, Inc.	Retail John Deere Sales and Service
Bluestone Coal Corporation	Coal Mining
Bluestone Equipment Management, Inc.	Equipment Maintenance and Service
Bluestone Industries, Inc.	Holding Company
Bluestone Mineral, Inc. (See Mechel Bluestone, Inc.)	Coal Mining
Bluestone Oil Corp.	Fuel Distribution
Bluestone Resources Inc.	Holding Company
Cane Patch Mining Co., Inc.	Coal Mining/Leases
Chestnut Land Holdings, LLC	Land Holding Company
Coaltex, Inc.	Research & Development
Cumberland Valley Contractors, Inc.	Mine Permits/Leases
Double-Bonus Coal Company	Coal Mining
Dublin Properties, L.C.	Land Holdings
Dynamic Energy Inc	Coal Mining
Energy Plus, Inc.	Coal Mining
Four Star Resources LLC	Coal Mining/Leases
Frontier Coal Company	Coal Mining
Gilbert Mine, Inc.	Coal Mining
Glade Acquisitions, LLC	Holding Company/Owns GSR, LLC
Glade Springs Real Estate Company L.L.C.	Real Estate Sales
Grain Development, Inc.	Land Holding Company
Grandview Investment Company	Holding Company/Land Holdings
Greenbrier Golf and Tennis Club Corporation	Food Services and Drinking Place (Alcoholic Beverages)
Greenbrier Hotel Corporation	Hotel/Casino/Golf/Leisure & Entertainment Resort
Greenbrier Medical Institute, LLC	Admin/Support Waste Mgt/Remediation services
Greenbrier Sporting Club Development, Inc.	Real Estate Development
Greenthorn, LLC	Coal Mining/Leases
Infinity Energy, Inc.	Coal Mining/Leases
James C. Justice Companies, Inc.	Holding Company
James C. Justice Companies, LLC	Holding Company
James River Construction Company	Excavation Company
JCI Coal Group LLC	Holding Company
Justice Aviation, LLC	Inactive
Justice Coal Corporation	Inactive
Justice Coal of Alabama, LLC	Coal Mining/Leases
Justice Coal Sales Corporation	Inactive
Justice Energy Company, Inc.	Coal Mining/Leases
Justice Family Farms, LLC	Agriculture/Crop Production and Sales
Justice Family Group, LLC	Holding Company/Greenbrier Related Companies
Justice Family Racing, LLC	Horse Ownership and Racing
Justice Highwall Mining, Inc.	Coal Mining/Leases
Justice Holdings LLC	Real Estate Holding Company
Justice Low Seam Mining, Inc.	Coal Mining/Leases
Kentucky Coal Transport, LLC	Owns/Leases On and Off Road Trucks for Mining and Agriculture
Kentucky Fuel Corporation	Coal Mining/Leases
Keystone Service Industries, Inc.	Coal Mining Support Services Company
Kirby Land Company, Inc.	Land Holdings/Surface and Underground Minerals
Liggett Mining, LLC	Coal Mining/Leases
M & P Services Inc.	Coal Mining Support Services Company
Mechel Bluestone Inc. (NKA Bluestone Mineral, Inc.)	Coal Mining/Leases
Mechel North America Sales Corporation	Coal Sales
Meg-Lynn Land Company, Inc.	Coal Mining/Leases
Midburg Property, LLC	Land Holding Company
Midtown Investments, LLC	Land Holding Company
Monroe Properties, Inc.	Land Holding Company
National Coal, LLC	Coal Mining/Leases
National Resources, Inc.	Coal Mining/Leases
Nine Mile Mining, Inc.	Coal Mining/Leases
NUFAC Mining Company, Inc	Coal Mining/Leases
Oakhurst Club, LLC	Golf Resort Real Estate Development
Old White Club Corporation	Holds WV Liquor License
Orchard Coal Company	Coal Mining/Leases
Pay Car Mining, Inc.	Coal Mining/Leases

Players Club, LLC	Inactive
Premium Coal Company, Incorporated	Coal Mining/Leases
Ranger Coal Holdings, LLC	Holding Company/Owns National Coal, LLC
Ranger Energy Group, LLC	Inactive
Ranger Energy Investments, LLC	Holding Company/Owns Ranger Coal Holdings, LLC
Ranger Investments, LLC	Personal Investments/James C. Justice, II and III
Rapidan, LLC	Inactive
S and H Mining Inc.	Coal Mining/Leases
Saddlebred, LLC	Holding Company/DBA Brier Patch Golf Links
SC Underground Mining, Inc.	Inactive
Second Sterling Corp.	Coal Mining/Leases
Sequoia Energy, LLC	Coal Mining/Leases
Southeast Cotton, Inc.	Agriculture/Crop Production and Sales
Southeast Elevators, Inc.	Support activities for Crops/Harvest
Southern Coal Corporation	Holding Company - Mining Operations
Southern Coal Sales Corporation	Coal Sales
Southern Minerals, LLC	Owens/Manages Mineral Rights
Southern Surface Mining, Inc.	Inactive
Stretcher Neck Properties, Limited Liability Company	Land Holding Company
SUMO, L.L.C.	Agriculture/Crop Production and Sales
The Chesapeake and Ohio Traveler, Inc.	Holding Company for various Greenbrier Companies
The Greenbrier Clinic, Inc.	Health Care Services
The Old White Development Company	Inactive
Virginia Fuel Corporation	Coal Mining/Leases
West Virginia Timber, LLC	Land Holding Company
Wilcox Industries Inc.	Land Holdings/Surface and Underground Minerals